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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,279	09/28/2001	David Andersen	42390P11767	4191

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EXAMINER

O'STEEN, DAVID R

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/966,279	ANDERSEN, DAVID	
	<b>Examiner</b>	<b>Art Unit</b>	
	David R. O'Steen	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-16, and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-16, and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9-28-01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Note to Applicant***

1. Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 24, 2006 has been entered.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-12, 14-16, and 23-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23 -25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claims 23-25 define a machine - readable medium embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized". The examiner suggests amending the claim to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claims 23-25 are drawn to functional descriptive material recorded on a machine readable-medium. Normally, the claim would be statutory. However, the specification, at page 5, paragraph 19 defines **the** claimed computer readable medium as encompassing statutory media such as a "floppy diskettes", "optical disks", CD-ROM", etc, as well as **non-statutory** subject matter such as a "data signals embodied in a carrier wave or other propagation medium".

A "signal" embodying functional descriptive material is neither a process nor a product (i.e., a tangible "thing") and therefore does not fall within one of the four statutory classes of § 101. Rather, "signal" is a form of energy, in the absence of any physical structure or tangible material.

Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claim as a whole is non-statutory. The examiner suggests amending the claim to include the disclosed tangible computer readable media, while at the same time excluding the intangible media such as signals, carrier waves, etc defined in the specification. Any amendment to the claim should be commensurate with its corresponding disclosure. For example, in claim 23, the phrase

“A machine - readable medium” should be changed to

-- A computer - readable memory --. And all recitations of “machine” should be changed to -computer--.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-9, 11-12, 14-16, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer (US 5,905,865) in view of Lu (US 2002/0010919) in view of Palmer (US 5,905,865) and in further view of Freeman (US 2002/0188943).

As regards Claims 1 and 23, Palmer discloses a method and an article of manufacture comprising a machine-readable medium having instructions, which when executed cause a machine to: insert a broad cast-related trigger code (such as a URL that opens websites that correspond to the television or radio programming, col. 5, lines

29-32) into a broadcast program (col. 8, lines 13-19), the code corresponding to web content, the web content relating to content of the broadcast program (col. 5, lines 24-26); detecting the trigger code while the broadcast program is being broadcast (col. 8, 13-19); and automatically displaying a website having the web content upon detection of the trigger code, wherein the website is displayed simultaneously while the broadcast program is being broadcast (col. 5, lines 28-36). Palmer fails to disclose, however, that the trigger code includes one or more of audio tone sequences and video motion sequences specific to the live broadcast program.

Lu discloses that that the trigger code includes one or more of audio tone sequences and video motion sequences specific to the live broadcast program (paragraph 34, lines 4-7).

At the time of invention it would have been obvious to a person of ordinary skill to use the audio signaling method disclosed in Lu, an analogous art, to trigger the synchronized web-content in Palmer because embedding audio signaling inside the broadcast eliminates for the need for much of the extra hardware of Palmer's system.

Palmer and Lu jointly fail to disclose that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast.

Freeman discloses that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast (paragraphs 19 and 122, lines 1-4 and 1-14).

At the time of invention it would have been obvious to a person of ordinary skill to expand Palmer and Lu's trigger insertion system by allowing insertion of a trigger into a

live broadcast, as done in Freeman, an analogous art, so as to make live events such as sporting events more interesting and interactive.

As regards Claim 2, while Palmer, Lu, and Freeman jointly disclose inserting a trigger into a live broadcast program, Lu further discloses inserting of the trigger code into the live broadcast program comprises inserting the trigger code into content of the live broadcast program (paragraph 17, lines 4-11), the code is based on a predetermined criteria specific to the live broadcast program (paragraph 34, lines 4-7).

As regards Claim 3, Lu further discloses wherein the trigger code comprises an audio trigger having the audio tone sequences (paragraph 34, lines 4-7).

As regards Claim 5, Palmer discloses a method, comprising: providing web content relating to a broadcast program (col. 5, lines 23-26); providing a trigger event for a web device in the form of a broadcast-related trigger code associated with the web content, wherein the trigger code is inserted into the broadcast program (col. 8, lines 13-19), the trigger code corresponding to the web content, the web content relating to content of the broadcast program and causing the web device to automatically retrieve and present the web content simultaneously with the presentation of the broadcast program by the receiving device by displaying a website having the web content (col. 5, lines 27-34). Palmer does not disclose that the trigger code includes one or more of audio tone sequences and video motion sequences specific to the live broadcast program and that the web device is located sufficiently close to a receiving device to detect the code when emitted by the receiving device while the broadcast program is being broadcast.

Lu does disclose that the trigger code includes one or more of audio tone sequences and video motion sequences specific to the live broadcast program (paragraph 34, lines 4-7) and that the web device is located sufficiently close to a receiving device to detect the code when emitted by the receiving device while the broadcast program is being broadcast (paragraph 34, lines 4-7 and 12-14). Palmer and Lu jointly fail to disclose that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast.

Freeman discloses that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast (paragraphs 19 and 122, lines 1-4 and 1-14).

As regards Claim 6, Palmer further discloses that the web device comprises a web tablet (col. 7, lines 62-67).

As regards Claim 7, Palmer further discloses that the web device comprises a computer system (col. 1, 61-64).

As regards Claim 8, Lu further discloses that the receiving device comprises a television (paragraph 31, lines 1-9).

As regards Claim 9, Palmer discloses a method comprising that the code corresponds to web content, the web content relating to content of the broadcast program (col. 5, lines 22-24); detecting the trigger code while the broadcast program is being broadcast; in response to detecting the trigger code, determining a uniform resource locator (URL) of a website having web content associated with the trigger code in the broadcast program and synchronizing the web content to the broadcast program



without the need for user action by automatically retrieving and presenting the web content simultaneously while the broadcast program is being broadcast by displaying a website having the web content (col. 5, lines 28-36). Palmer fails to disclose monitoring an output of a receiving device, that is receiving and presenting a broadcast program, for a trigger in the form of a broadcast-related trigger code that is inserted into the broadcast program, the trigger code including one or more audio tone sequences and video motion sequences specific to the broadcast event (paragraph 34, lines 4-7)

Lu discloses monitoring an output of a receiving device, that is receiving and presenting a broadcast program, for a trigger in the form of a code that is inserted into the broadcast program, the trigger code including one or more audio tone sequences and video motion sequences specific to the broadcast event (paragraph 34, lines 4-7). Palmer and Lu jointly fail to disclose that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast.

Freeman discloses that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast (paragraphs 19 and 122, lines 1-4 and 1-14).

As regards Claim 11, Palmer further discloses terminating the presentation of the web content based on the predetermined criteria (such as terminating the present web content when the broadcaster sends out another web address, col. 5, lines 28-34).

As regards Claim 12, Palmer discloses a system comprising an insertion module to insert a broadcast-related trigger code into a broadcast program (col. 8, lines 5-13), the trigger code corresponding to web content, the web content relating to content of the

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broadcast program (col. 5, lines 23-27); a broadcasting station to broadcast the broadcast program (col. 8, lines 5-13); a web device to automatically display a website having the web content upon detection of the code, wherein the website is displayed simultaneously while the broadcast program is being broadcast (col. 5, lines 29-34). Palmer fails to a receiver to detect the trigger code while the broadcast program is being broadcast, the trigger code including one or more of audio tone sequences and video motion sequences specific to the live broadcast program (paragraph 34, lines 4-7 and 12-14).

Lu further discloses a receiver to detect the trigger code while the broadcast program is being broadcast, the trigger code including one or more of audio tone sequences and video motion sequences specific to the live broadcast program (paragraph 34, lines 4-7 and 12-14). Palmer and Lu jointly fail to disclose that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast.

Freeman discloses that the trigger is inserted into a live broadcast program while the live broadcast program is being broadcast (paragraphs 19 and 122, lines 1-4 and 1-14).

As regards Claim 14, Palmer discloses that the broadcasting station comprises one or more of: a television network, a radio network (col. 3, lines 53-55), a cable network provider/operator, satellite system provider (col. 8, line 8), and a content recorder (col. 8, lines 8-13).

As Regards Claim 15, Lu further discloses that the receiver is further to receive to the live broadcast program having the trigger code (paragraph 31, lines 1-9).

As regards Claim 16, Palmer further discloses that the receiver comprises one or more of the following: a set top box, a satellite dish, a television, a radio (col. 3, lines 52-55), a computer, a Compact Disk (CD) player, a cassette player, and a Digital Video Disk (DVD) player (col. 2, lines 26-27).

As regards Claim 24, Lu discloses that the trigger code comprises an audio trigger having the audio tone sequences (paragraph 34, lines 4-7).

Claims 4 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer (US 5,905,865) in view of Lu (US 2002/0010919) and in further view of Freeman (US 2002/0188943) and in further view of Dunki-Jacobs (US 6,112,053).

As regards Claims 4 and 25, Palmer, Lu, and Freeman jointly disclose the method and article of manufacture of Claims 1 and 23, however, they do not disclose that the code comprises a video trigger having the audio tone sequences and the video motion sequences. Dunki-Jacobs that the code comprises a video trigger having the audio tone sequences and the video motion sequences (col. 1, lines 43-45).

At the time of invention it would have been obvious to a person of ordinary skill to use the audio and video signaling disclosed in Dunki-Jacobs, an analogous art, to trigger the synchronized web-content device jointly disclosed in Palmer, Lu, and Freeman because using combined audio and video signaling inside the broadcast can provide for a more robust triggering mechanism than just audio alone.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer (US 5,905,865) in view of Lu (US 2002/0010919) and in further view of Freeman (US 2002/0188943), Haitzuka (2005/0192867) and Augenbraun (2005/0149981).

As regards Claims 10, while Palmer, Lu, and Freeman jointly disclose method of Claim 9, they do not however, disclose presenting of the web content comprises diversified presentation of the web content based on a predetermined criteria comprising time-based diversification and location based diversification. Haitzuka discloses presenting web content comprising diversified presentation of the web content based on a predetermined criteria comprising location-based diversification (paragraph 20, lines 1-6).

At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the location-based diversification of Haitzuka, an analogous art, with the trigger code method of Palmer, Lu, and Freeman because it increases the relevance of the web data to the user.

Palmer, Lu, Freeman, and Haitzuka jointly fail to disclose presenting web content comprising diversified presentation of the web content based on a predetermined criteria comprising time-based diversification.

Augenbraun discloses presenting web content comprising diversified presentation of the web content based on a predetermined criteria comprising time-based diversification (paragraph 6, lines 7-12).

At the time of invention it would have been obvious to a person of ordinary skill to use the time based targeting of data disclosed in Augenbraun, an analogous art, with the trigger code method of Palmer, Lu, Freeman, Haitzuka because it increases the relevance of the web data to the user.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R. O'Steen whose telephone number is 571-272-7931. The examiner can normally be reached on 8:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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DRO

  
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